

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

MICROSOFT CORPORATION,

Defendant.

Civil Action No. 98-1232 (TPJ)

STATE OF NEW YORK *ex rel.*

Attorney General DENNIS C. VACCO, *et al.*,

Plaintiffs,

v.

MICROSOFT CORPORATION,

Defendant.

Civil Action No. 98-1233 (TPJ)

**UNITED STATES' AND PLAINTIFF STATES' REPLY IN SUPPORT OF
EMERGENCY MOTION TO COMPEL**

Microsoft's Memorandum in Opposition to Plaintiffs' Emergency Motion to Compel rests on two erroneous premises: (1) that the plaintiffs' motion is an "improper attempt to obtain every piece of information in a corporate wide database about every product and every sales channel for use in future litigation and investigations," and (2) that the motion attempts to "rewrite" Plaintiffs' Third Joint Request. Opp. at 4-5. Both premises are wrong.

First, plaintiffs' motion itself made clear that plaintiffs are seeking only statistical information from Microsoft's "revenue reporting systems" that relate *directly and only to Windows and Internet Explorer*, the products at the heart of this litigation -- nothing more. The motion expressly states,

During argument at the Final Pretrial Conference on October 9, Microsoft expressed concern that plaintiffs not have unfettered access to information in the databases concerning hundreds of wholly irrelevant Microsoft products. Plaintiffs do not seek such access. . . . There can be no argument that statistical information concerning Microsoft's sales, shipments, pricing, and distribution of Windows products and Internet Explorer is not fundamentally relevant and critical to this case.

Plaintiffs' Motion at 4.

Notably, Microsoft's Opposition does not dispute that the "finished goods" and "online" channel portions of the MS Sales database contain data relating to sales and shipments of Windows operating system products and distribution of Internet Explorer through channels other than the OEM channel.

Second, plaintiffs' motion does not seek to "rewrite" plaintiffs' Third Joint Request. That request plainly calls for "[a]ll data contained therein or other contents thereof . . . " for the MS Sales, OEM Query, and other databases. The terms of the request simply were not limited, as Microsoft's narrow reading suggests, only to data in the databases relating to operating system products in the OEM channel.

Accordingly, plaintiffs' motion to compel should be granted.

DATED: October 19, 1998

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